

MANDATE

USDC/MA
Judge O'Tade

United States Court of Appeals For the First Circuit

No. 05-1002

JON FIGLIOLINI,
Petitioner, Appellant,
v.

UNITED STATES,
Respondent, Appellee.

Before
Boudin, Chief Judge,
Stahl, Senior Circuit Judge,
and Lipez, Circuit Judge.

JUDGMENT

Entered: November 21, 2005

Jon Figliolini appeals from the district court's summary denial of his motion pursuant to 28 U.S.C. § 2255 on the ground that his claims had already been considered and rejected by this court on direct appeal. The issue presently before us is whether the district court erred in summarily denying the § 2255 motion in light of Figliolini's reliance upon "newly discovered evidence."

As an initial matter, it does not appear that the evidence qualifies as "newly discovered," given Figliolini's contention in his § 2255 memorandum that his attorney was in possession of the evidence at the time of sentencing. Moreover, the evidence does not support the factual proposition that underlies Figliolini's § 2255 claims: that the government knew when it promised to recommend a reduction for acceptance of responsibility if Figliolini did not commit another crime after entering the plea agreement, that it would not be obligated to make that recommendation. Accordingly, it plainly appears on the face of Figliolini's § 2255 motion that

the new evidence on which he seeks to rely does not entitle him to the requested relief.

The district court's summary denial of the § 2255 motion is affirmed.

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

Certified and Issued as Mandate
under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk

Susan Pedraza
Deputy Clerk

Date: 1-12-06

[cc: Jon Figliolini, Patrick M. Hamilton, Esq. and Dina Michael
Chaitowitz, Esq.]